



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/855,061	05/13/97	AUGUSTINE	S 1342-196

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QM21/0623

EXAMINER

GRAHAM, M

ART UNIT

3711

PAPER NUMBER

14

DATE MAILED: 06/23/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/855,061

Applicant(s)
Augustine et al.

Examiner
Mark S. Graham

Group Art Unit
3711



☒ Responsive to communication(s) filed on Apr 7, 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 20-39 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 20-39 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3304

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 21, 22, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Roehr. Regarding the new limitations, Roehr's inflation inlet is in the center of the "foot" end of the blanket, and at the opposite "head" end there is a noninflatable portion beyond the edge weld 15 as can be best seen in Fig. 1.

The applicant's arguments regarding the alleged non-inflatability of Roehr's blanket have been considered. However, the examiner respectfully submits that such a position is completely without merit. Roehr discloses a sealed envelope of flaccid material (plastic foil) into which air is pumped at varying pressure depending on what the user desires. Under such conditions it is inherent that what is being disclosed is an inflatable structure.

Further backing this viewpoint, is the fact that the applicant cannot point to any claimed structural feature not disclosed by Roehr. It is inherent that two identical combinations of elements constructed in the identical fashion will operate in an identical fashion. That Roehr does not specifically use the word "inflate" or "inflatable" is not considered dispositive on the issue in any regard, where the operation of the device is so clear to any ordinarily skilled artisan reading Roehr's disclosure.

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Finally, Roehr provides a pressure release valve 31 for the blanket. Clearly such a valve would not be necessary if the blanket was not inflatable.

Regarding claim 20, the examiner considers it to be inherent that the fabric lined foil disclosed by Roehr means a foil wherein the fabric lined layer is that which would touch the patient which would be the only logical purpose of the fabric. Fabric oriented any other way would interfere with the welds in the blanket and would not serve any purpose. Regarding the "laminated" limitation Roehr discloses a single layer of fabric lined foil not two separate layers.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 25, 26, 27, 28, 29, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roehr for the reasons set forth in the previous action.

In response to the applicant's arguments, the use of disposable bedding which has contacted patients is a well known sanitary feature of any modern hospital. Second there is no burden on the examiner to establish that paper be the most likely choice of the ordinarily skilled artisan selecting a disposable feature, only that it be an obvious one. Finally, as paper is well known as the most common disposable substitute for cloth, (e.g. towels, sheets, robes etc.) it only stands to reason that the ordinarily skilled artisan would select such as a disposable substitute for Roehr's fabric.

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Regarding the "comfort" factor of the base sheet, the examiner respectfully submits that the applicants were not the first to discover that cloth or fiber makes for more comfortable skin contact than plastic foil. As an example applicants are asked to take note of how much clothing and bedding is made of plastic foil and how much is made of cloth or fiber.

Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine '188 in view of Roehr for the reasons set forth in the previous action and above.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roehr in view of Hardy for the reasons set forth in the previous action and above.

Applicant's arguments merely consider the references separately, rather than as a whole as done by the examiner. Roehr discloses an inflatable thermal blanket. Hardy discloses a fluid warmed thermal blanket which discloses a recessed portion for the head/neck. One incorporating Hardy's teaching into Roehr's blanket for the purpose of providing a head/neck recess necessarily constructs an inflatable thermal blanket with a non-inflatable portion in the form of a head/neck recess. Applicant is correct in asserting that opening is nothing but air. By definition this makes it uninflatable.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine in view of Roehr and Hardy for the reasons set forth in the above applications of Roehr and Hardy.

Applicants' reliance on the '656 reference as evidence of patentability is not understood. The '656 reference is not in any way pertinent to the prosecution at hand. Further comment thereon would therefore be spurious.

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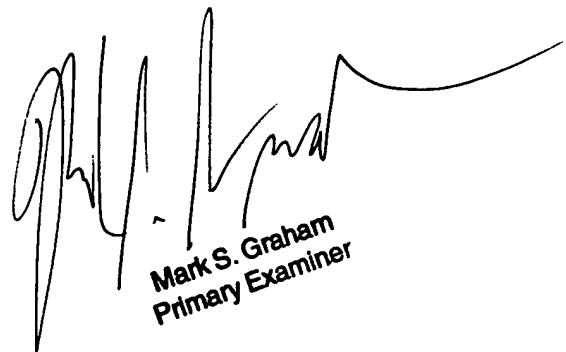
Applicant's arguments filed 4/7/98 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number (703) 308-1355.

MSG
June 16, 1998



Mark S. Graham
Primary Examiner